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12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14	ABS ENTERTAINMENT, INC., an)	Case No. 2:15-cv-6257-PA (AGRx)
15	Arkansas corporation, BARNABY)	
16	RECORDS, INC., a California)	ANSWER AND AFFIRMATIVE
17	corporation, BRUNSWICK RECORD)	DEFENSES OF DEFENDANTS CBS
18	CORPORATION, a New York)	CORPORATION AND CBS RADIO
19	corporation and MALACO, INC., a)	INC. TO PLAINTIFFS' FIRST
20	Mississippi corporation, each)	AMENDED COMPLAINT
21	individually and on behalf of all others)	
22	similarly situated,)	
23)	
24	Plaintiffs,)	
25)	
26	v.)	
27)	
28	CBS CORPORATION, a Delaware)	
	corporation; CBS RADIO INC., a)	
	Delaware corporation; and DOES 1)	
	through 10,)	
)	
	Defendants.)	

1 Defendants CBS Corporation and CBS Radio Inc. (collectively, "CBS"), by
 2 their attorneys, hereby answer the First Amended Complaint filed by Plaintiffs ABS
 3 Entertainment, Inc., Barnaby Records, Inc., Brunswick Record Corporation, and
 4 Malaco, Inc. (collectively, "Plaintiffs") as follows:

5 1. CBS denies the allegations in Paragraph 1.

6 2. CBS admits that it is an operator in the United States of media and
 7 entertainment services via broadcast and digital delivery. CBS also admits that it
 8 delivers content through broadcast radio channels, the Internet, and through one or
 9 more mobile applications. CBS also admits that it owns and operates 117 radio
 10 stations in 26 U.S. media markets nationwide. CBS also admits that it owns and
 11 operates the music stations KROQ-FM– 106.7, KAMP-FM – 97.1, KCBS-FM –
 12 93.1, KRTH-FM – 101.1, and KTWV-FM – 94.7. CBS denies knowledge or
 13 information sufficient to respond to all other allegations in Paragraph 2.

14 3. CBS admits that it delivers content through broadcast radio channels,
 15 the Internet, and through one or more mobile applications. CBS is without
 16 knowledge or information sufficient to respond to all other allegations in
 17 Paragraph 3 and on that basis denies them.

18 4. CBS denies the allegations in Paragraph 4.

19 5. CBS is without knowledge or information sufficient to form a belief as
 20 to the truth of the allegations in Paragraph 5, and, on that basis, denies them.

21 6. CBS denies the allegations in Paragraph 6.

22 7. CBS denies the allegations in Paragraph 7.

23 8. CBS is without knowledge or information sufficient to form a belief as
 24 to the truth of the allegations in Paragraph 8, and, on that basis, denies them.

25 9. CBS is without knowledge or information sufficient to form a belief as
 26 to the truth of the allegations in Paragraph 9, and, on that basis, denies them.

27 10. CBS is without knowledge or information sufficient to form a belief as
 28 to the truth of the allegations in Paragraph 10, and, on that basis, denies them.

1 11. CBS is without knowledge or information sufficient to form a belief as
2 to the truth of the allegations in Paragraph 11, and, on that basis, denies them.

3 12. CBS is without knowledge or information sufficient to form a belief as
4 to the truth of the allegations in Paragraph 12, and, on that basis, denies them.

5 13. CBS is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in Paragraph 13, and, on that basis, denies them.

7 14. CBS is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 14, and, on that basis, denies them.

9 15. CBS is without knowledge or information sufficient to form a belief as
10 to the truth of the allegations in Paragraph 15, and, on that basis, denies them.

11 16. CBS is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 16, and, on that basis, denies them.

13 17. CBS is without knowledge or information sufficient to form a belief as
14 to the truth of the allegations in Paragraph 17, and, on that basis, denies them.

15 18. CBS admits that CBS Corporation is a corporation organized under the
16 laws of Delaware with its principal place of business in New York, New York, and
17 that CBS Corporation is the ultimate parent company of CBS Radio Inc. CBS also
18 admits that it delivers content through broadcast radio channels, the Internet, and
19 through one or more mobile applications. Except as expressly admitted, CBS denies
20 the allegations in paragraph 18 of the First Amended Complaint.

21 19. CBS admits that CBS Radio Inc. is a corporation organized under the
22 laws of Delaware, with its principal place of business in New York, New York, and
23 that Defendant CBS Corporation is the ultimate parent company of CBS Radio Inc.

24 20. CBS is without knowledge or information sufficient to form a belief as
25 to the truth of the allegations in Paragraph 20, and, on that basis, denies them.

26 21. CBS is without knowledge or information sufficient to form a belief as
27 to the truth of the allegations in Paragraph 21, and, on that basis, denies them.

28 22. CBS denies the allegations in Paragraph 22.

1 23. CBS denies the allegations in Paragraph 23.

2 24. CBS denies the allegations in Paragraph 24.

3 25. CBS is without knowledge or information sufficient to form a belief as
4 to the truth of the allegations in Paragraph 25, and, on that basis, denies them.

5 26. CBS is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in Paragraph 26, and, on that basis, denies them.

7 27. CBS is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 27, and, on that basis, denies them.

9 28. CBS is without knowledge or information sufficient to form a belief as
10 to the truth of the allegations in Paragraph 28, and, on that basis, denies them.

11 29. CBS admits that it delivers content through broadcast radio channels,
12 the Internet, and through one or more mobile applications. CBS also admits that it
13 owns and operates the radio stations: (a) Los Angeles: (i) KROQ-FM – 106.7; (ii)
14 KAMP-FM – 97.1; (iii) KCBS-FM – 93.1; (iv) KRTH-FM – 101.1; and (v) KTWV-
15 FM – 94.7; (b) Palm Springs: KEZN-FM – 103.1; (c) Riverside: (i) KFRG-FM –
16 95.1; (ii) KVFG-FM – 103.1; and (iii) KXFG-FM – 92.9; (d) Sacramento: (i) KNCI-
17 FM – 105.1; (ii) KSFM-FM – 102.5; (iii) KYMX-FM – 96.1; and (iv) KZZO-FM –
18 100.5; (e) San Diego: (i) KEGY-FM – 103.7; and (ii) KYXY-FM – 96.5; (f) San
19 Francisco: (i) KITS-FM – 105.3; (ii) KLLC-FM – 97.3; and (iii) KMVQ-FM – 99.7.
20 Except as expressly admitted, CBS denies the allegations in Paragraph 29 of the
21 First Amended Complaint.

22 30. CBS admits that it delivers content through broadcast radio channels,
23 the Internet, and through one or more mobile applications. Except as expressly
24 admitted, CBS denies the allegations in Paragraph 30 of the First Amended
25 Complaint.

26 31. CBS admits that it delivers content through broadcast radio channels,
27 the Internet, and through one or more mobile applications. Except as expressly
28

1 admitted, CBS denies the allegations in Paragraph 31 of the First Amended
2 Complaint.

3 32. CBS denies the allegations in Paragraph 32.

4 33. CBS denies the allegations in Paragraph 33.

5 34. CBS denies the allegations in Paragraph 34.

6 35. CBS denies the allegations in Paragraph 35.

7 36. CBS denies the allegations in Paragraph 36.

8 37. CBS denies the allegations in Paragraph 37.

9 38. CBS denies the allegations in Paragraph 38.

10 39. CBS denies the allegations in Paragraph 39.

11 40. CBS denies the allegations in Paragraph 40.

12 41. CBS denies the allegations in Paragraph 41.

13 **FIRST CLAIM FOR RELIEF**

14 **(For Violation of California Civil Code § 980(a)(2) Against All Named**
15 **Defendants and Does 1 through 10)**

16 42. CBS repeats and reasserts its responses to each of the preceding
17 paragraphs as if fully set forth herein.

18 43. CBS denies the allegations in Paragraph 43.

19 44. CBS denies the allegations in Paragraph 44.

20 45. CBS denies the allegations in Paragraph 45.

21 46. CBS denies the allegations in Paragraph 46.

22 47. CBS denies the allegations in Paragraph 47.

23 **SECOND CLAIM FOR RELIEF**

24 **(For Misappropriation Against All Named Defendants and**
25 **Does 1 Through 10)**

26 48. CBS repeats and reasserts its responses to each of the preceding
27 paragraphs as if fully set forth herein.

28 49. CBS denies the allegations in Paragraph 49.

1 50. CBS is without knowledge or information sufficient to form a belief as
2 to the truth of the allegations in Paragraph 50, and on that basis denies them.

3 51. CBS denies the allegations in Paragraph 51.

4 52. CBS denies the allegations in Paragraph 52.

5 53. CBS denies the allegations in Paragraph 53.

6 54. CBS denies the allegations in Paragraph 54.

7 55. CBS denies the allegations in Paragraph 55.

8 56. CBS denies the allegations in Paragraph 56.

9 **THIRD CLAIM FOR RELIEF**

10 **(For Unfair Business Practices Against All Named**
11 **Defendants and Does 1 Through 10)**

12 57. CBS repeats and reasserts its responses to each of the preceding
13 paragraphs as if fully set forth herein.

14 58. CBS denies the allegations in Paragraph 58.

15 59. CBS denies the allegations in Paragraph 59.

16 60. CBS denies the allegations in Paragraph 60.

17 61. CBS denies the allegations in Paragraph 61.

18 62. CBS denies the allegations in Paragraph 62.

19 63. CBS denies the allegations in Paragraph 63.

20 64. CBS denies the allegations in Paragraph 64.

21 **FOURTH CLAIM FOR RELIEF**

22 **(For Conversion Against All Named Defendants and Does 1 Through 10)**

23 65. CBS repeats and reasserts its responses to each of the preceding
24 paragraphs as if fully set forth herein.

25 66. CBS denies the allegations in Paragraph 66.

26 67. CBS denies the allegations in Paragraph 67.

27 68. CBS denies the allegations in Paragraph 68.

28 69. CBS denies the allegations in Paragraph 69.

1 70. CBS denies the allegations in Paragraph 70.

2 71. CBS denies the allegations in Paragraph 71.

3 **GENERAL DENIAL OF ALLEGATIONS IN THE FIRST AMENDED**
4 **COMPLAINT**

5 CBS denies any allegations not specifically responded to above, whether
6 expressed, implied, or contained in headings appearing throughout the First
7 Amended Complaint.

8 **AFFIRMATIVE DEFENSES**

9 As separate and distinct affirmative defenses, CBS alleges as follows:

10 **First Affirmative Defense**

11 **(License)**

12 Each of the claims in the First Amended Complaint, in whole or in part, is
13 barred by an express or implied license conveyed by Plaintiffs to CBS or because
14 Plaintiffs otherwise licensed, authorized, or consented to CBS's alleged conduct.

15 **Second Affirmative Defense**

16 **(Waiver)**

17 Each of the claims in the First Amended Complaint, in whole or in part, is
18 barred by the doctrine of waiver.

19 **Third Affirmative Defense**

20 **(Estoppel)**

21 Each of the claims in the First Amended Complaint, in whole or in part, is
22 barred by the doctrine of estoppel.

23 **Fourth Affirmative Defense**

24 **(Laches)**

25 Each of the claims in the First Amended Complaint, in whole or in part, is
26 barred by the doctrine of laches.

Fifth Affirmative Defense**(Unclean Hands)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred by the doctrine of unclean hands.

Sixth Affirmative Defense**(Abandonment)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred by the doctrine of abandonment.

Seventh Affirmative Defense**(Fair Use)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred by the doctrine of fair use.

Eighth Affirmative Defense**(Statute of Limitations)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred by the applicable statutes of limitation, including California Code of Civil Procedure § 338 and California Business and Professions Code § 17208.

Ninth Affirmative Defense**(No Injury)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred because Plaintiffs have suffered no provable injury as a result of CBS's alleged conduct.

Tenth Affirmative Defense**(Failure to Join Indispensable Parties)**

Each of the claims in the First Amended Complaint, in whole or in part, is barred because Plaintiffs have failed to name or join an indispensable party or parties to the present action, including but not limited to certain persons or entities who may own copyrights to sound recordings fixed after February 15, 1972.

Eleventh Affirmative Defense

(Failure to Mitigate Damages)

Each of the claims in the First Amended Complaint, in whole or in part, is barred because Plaintiffs failed to mitigate any damages purportedly suffered as a result of the conduct alleged in the First Amended Complaint.

Twelfth Affirmative Defense

(Violation of Cal. Code Civ. Proc. § 425.16)

Each of the claims in the First Amended Complaint, in whole or in part, is barred by California's Anti-SLAPP statute, codified at California Code of Civil Procedure § 425.16, because CBS's alleged conduct arises from acts in furtherance of CBS's right of petition or free speech under the United States Constitution or the California Constitution, and Plaintiffs cannot establish a probability that it will prevail on its claims.

Thirteenth Affirmative Defense

(Election of Remedies)

Each of the claims in the First Amended Complaint, in whole or in part, is barred by the election of remedies doctrine because the Plaintiffs seek mutually inconsistent remedies in its causes of action.

Additional Defenses

CBS reserves the right to assert additional defenses based upon information learned or obtained during discovery.

PRAYER FOR RELIEF

For the reasons set for above, CBS respectfully requests that the Court:

(a) Enter judgment in favor of CBS on each and every cause of action set forth in the First Amended Complaint;

(b) Dismiss Plaintiffs' First Amended Complaint in its entirety with prejudice;

(c) Award attorneys' fees and costs in favor of CBS as permitted by applicable law; and

(d) Award such further relief as this Court may deem just and proper.

Dated: November 12, 2015

Respectfully submitted,

By: /s/ Robert M. Schwartz

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Andrew J. Strabone

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 12, 2015 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail, facsimile, U.S. Mail and/or overnight delivery.

/s/ Andrew J. Strabone
Andrew J. Strabone